RICHARD H. CLARK

IBLA 85-893, 86-27, 86-120 Decided June 30, 1986

Appeals from decisions of California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. CA-17713, CA-17788, CA-17789.

Affirmed.

1. Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Offers to Lease

Lands within a national park or withdrawn from oil and gas leasing by Public Land Order are not available for oil and gas leasing and BLM properly rejects a noncompetitive oil and gas lease offer for such lands.

APPEARANCES: Richard H. Clark, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Richard H. Clark has appealed from three decisions of the California State Office, Bureau of Land Management (BLM), dated August 6, 1985 and September 4, 1985, rejecting his noncompetitive oil and gas lease offers, CA-17713, CA-17788, and CA-17789, for 100 acres of public domain land located off the coast of San Miguel Island. 1/ BLM rejected appellant's lease offers because the land was not available for oil and gas leasing. In the case of lease offers CA-17713 and CA-17789, the land had been set aside as part of the Channel Islands National Park pursuant to section 201 of the Act of March 5, 1980, P.L. No. 96-199, 94 Stat. 74 (1980), and was not available for oil and gas leasing under 43 CFR 3100.0-3(a)(2). In the case of lease offer CA-17788, the land had been withdrawn from mineral leasing pursuant to Public Land Order (PLO) 6369, dated April 11, 1983 (48 FR 16684 (April 19, 1983)), for the purpose of establishing the California Island Wildlife Sanctuary.

1/ Lease offer CA-17713, filed July 18, 1985, covers 40 acres of land situated in sec. 28, T. 1 S., R. 33 W., San Bernardino Meridian, Santa Barbara County, California, known as "Prince Island." Lease offer CA-17788, originally filed August 1, 1985 and amended August 2, 1985, covers 20 acres of land situated in sec. 11, T. 1 S., R. 34 W., San Bernardino Meridian, Santa Barbara County, California, known as "Wilson Rock." Lease offer CA-17789, filed August 2, 1985, covers 40 acres of land situated in sec. 28, T. 1 S., R. 34 W., San Bernardino Meridian, Santa Barbara County, California, known as "Castle Rock." All three lease offers were filed pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982).

In his statement of reasons for appeal, appellant contends that his oil and gas lease offer was filed pursuant to a 1961 agreement with the then Secretary of the Interior, which accorded his father, Reginald R. Clark, and "his heirs" the right to apply for an oil and gas lease before the land was "'sealed up.'" Appellant explains that his father filed an oil and gas lease offer, LA-0121558, for land "on San Miguel Island" 2/ and that the Department affirmed rejection of that offer in Departmental decision A-27523, dated February 28, 1961. Nevertheless, appellant alleges:

> In 1961, the office of the Secretary of the Interior communicated to attorney Jonah Jones, Jr. requesting that my father withdraw his oil lease offer with the provision that should San Miguel Island be returned to public domain, that he, or his heirs, may have the first opportunity to apply for the oil and gas lease. As the Department of the Navy has apparently withdrawn interest in San Miguel, attested by the fact that the area is now a national park, I submit that due process of law was not followed by allowing my father the right of offering to lease oil and gas on this island and its annexes, before they were "sealed up," so to speak.
>
> As I am not aware of the Secretary offering this particular opportunity to anyone else except my father and his heirs, I am now taking advantage of this offering on behalf of myself and family. My father is prepared to swear under oath that the aforementioned is true and correct to the best of his knowledge.

Appellant also argues that the land should be leased for oil and gas because of the "high probability" of recoverable oil and the fact that the islands are "completely barren" and would suffer no "appreciable" environmental damage as a result of leasing.

Appellant has submitted a number of documents with respect to activity prior to February 28, 1961 regarding the efforts of appellant's father and Mr. Jones to acquire an oil and gas lease. This activity involved contacts with the Department of the Navy, which had jurisdiction over the land, and a member of Congress. However, none of these documents refer to any agreement whereby the Secretary of the Interior would accord appellant's father and his heirs a right to apply for an oil and gas lease. Even assuming that appellant can substantiate the existence of such an agreement, appellant acknowledges that the purported right was contingent on return of the land to the "public domain," which means, in relevant terms, making the land

2/ Appellant has submitted a serial register page with respect to lease offer LA-0121558 which refers to two parcels of land, totalling 1310.31 acres, which appear to encompass San Miguel Island and offshore islands. The serial register page also indicates that the lease offer was also filed on behalf of Jonah Jones, Jr.

once again available for oil and gas leasing. See Navajo Tribe of Indians, 82 IBLA 387 (1984). This has not occurred, as discussed infra.

The Departmental decision to which appellant refers is cited as J. G. Hatheway, 68 I.D. 48 (1961), which was a decision by the Deputy Solicitor affirming a June 5, 1957 decision of the Director, BLM, which had rejected various lease offers, including LA-0121558, for "certain lands on San Miguel Island and ancillary islets." The decision stated that the land had been transferred to the jurisdiction of the Department of the Navy "for naval purposes" by Executive Order 6896, dated November 7, 1934, and could not be leased for oil and gas where the Secretary of Defense determined that leasing would be "inconsistent with the military use of the lands" under section 6 of the Act of February 28, 1958, 43 U.S.C. § 158 (1982). Such a determination had been made by the Secretary of Defense and, accordingly, the Deputy Solicitor affirmed rejection of the lease offers in a final decision on behalf of the Secretary of the Interior. 3/

Appellant has provided no evidence that either he or his father made any other effort to acquire an oil and gas lease covering the land on San Miguel Island or surrounding islands prior to the filing of the three lease offers involved herein. The record indicates that the land remained under the jurisdiction of the Department of the Navy, and presumably was subject to its continuing objection to oil and gas leasing. Moreover, by virtue of designation of the land as part of a national park and as part of the wildlife sanctuary, the land has not been returned to the unreserved public domain.

[1] It is well established that land within a national park or monument is not available for oil and gas leasing pursuant to section 17 of the Mineral Leasing Act, supra. Fred R. Cerminaro, 52 IBLA 116 (1981). This is based on the specific statutory prohibition contained in section 1 of the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1982), which excludes lands "in national parks and monuments" from oil and gas leasing. See also 43 CFR 3100.0-3(a)(2). Thus, with respect to appellant's lease offers which cover lands within the Channel Islands National Park, we conclude that BLM properly rejected the lease offers. Similarly, it is well established that lands which have been specifically withdrawn from mineral leasing are not available for oil and gas leasing until there has been a modification or revocation of the withdrawal. Paul C. Kohlman, 75 IBLA 171 (1983), and cases cited therein.

3/ The Deputy Solicitor also held, in accordance with long-standing precedent, that the lease offers would "not be suspended pending the availability of the land for leasing." J. G. Hatheway, supra at 52. Thus, this final Departmental decision issued on appeal to the Secretary of the Interior is directly contrary to appellant's assertion that the Secretary of the Interior made an agreement contingent on withdrawal of that offer or that he agreed to provide appellant's father with a continuing inchoate right to apply for an oil and gas lease, presumably to be exercised whenever the Department of the Navy should consent to leasing.

With respect to lease offer CA-17788, PLO 6369 withdrew the affected land, subject to valid existing rights, "from settlement, sale, location, or entry, under the general land laws, including the mining laws * * * and from leasing under the mineral leasing laws." 48 FR 16684 (April 19, 1983). Because this lease offer covers lands within the California Island Wildlife Sanctuary withdrawn by PLO 6369, we conclude that BLM properly rejected the lease offer. 4/

Finally, the fact that the lands involved herein were either included in the Channel Islands National Park or withdrawn by PLO 6369 means that the land has not been restored to the public domain for purposes of oil and gas leasing. As to the question whether the Secretary should have accorded appellant's father the opportunity to "apply" for an oil and gas lease before the land was "'sealed up,'" as appellant asserts, the question is irrelevant. Even if the Secretary had accorded appellant's father that opportunity and a lease offer had been filed, such an offer would not preclude the Secretary from subsequently withdrawing the land from mineral leasing nor Congress from designating the land as part of a national park. 5/ Designation of land as part of a national park precludes the Department from issuing a noncompetitive oil and gas lease pursuant to 30 U.S.C. § 226 (1983), even where a lease offer was filed prior to such designation. Cf. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); E. B. Joiner, 78 IBLA 323 (1984). As the court stated in McDade v. Morton, supra at 1010: "[T]he courts have consistently held that no right to receive an oil and gas lease is obtained by the filing of a lease offer." The discretion reserved to the Secretary of the Interior to accept or reject a lease offer also means that the Secretary is not precluded from withdrawing the land from mineral leasing and then rejecting a previously filed lease offer on the basis of that withdrawal. Until issuance of a lease, a lease offer will not be considered a valid existing right, which is "immune from denial or extinguishment by the exercise of secretarial discretion" and thus excepted from the effect of a withdrawal. The Bureau of Land Management Wilderness Review and Valid Existing Rights, Solicitor's Opinion, 88 I.D. 909, 912 (1981). Thus, BLM could properly reject a lease offer regardless of the fact that it was filed prior to Secretarial or Congressional action making the land unavailable for leasing. See Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969); Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966).

4/ As discussed infra, appellant has established no valid existing right under PLO 6369 which would be excepted from the withdrawal effected by that order or which would entitle him to obtain an oil and gas lease within the wildlife sanctuary.

5/ Appellant states that the Secretary had agreed to allow appellant's father to "apply" for a lease before others would have the opportunity, not that the Secretary would take no other action to protect the land, which might have the effect of continuing to make the land unavailable for leasing. Indeed, it is highly unlikely the Secretary would restrict his land management authority in that way. Moreover, the Secretary could not preclude subsequent withdrawal of the land by Act of Congress.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.